

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

RICHARD R. COOCH  
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE  
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**By facsimile & U.S. Mail**

**Re: State of Delaware v. Robert W. Jackson, III.  
Cr. ID No. 92003717DI**

Upon Defendant's "Motion for Order to Release  
Department of Corrections Records."  
**DENIED.**

Submitted: May 2, 2006  
Decided: May 3, 2006

Dear Counsel:

Currently before this Court is a "Motion for Order to Release Department of Corrections Records" filed by Robert W. Jackson, III ("Defendant"). The procedural history of this capital murder case is set forth in this Court's Order of April 5, 2006, which denied Defendant's stay of his May 19, 2006, execution.<sup>1</sup> Defendant now moves this Court to order the Department of Corrections to release 1) Defendant's institutional records, 2) his Department of Corrections medical records and 3) a "Psychological/Psychiatric Report" apparently received by this Court in July

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<sup>1</sup> *State v. Jackson*, Del. Super., ID No. 92003717DI, Cooch, J (April 6, 2006) (ORDER), *appeal docketed*, No. 216-2006 (Del. April 27, 2006).

1993, to Defendant's counsel. For the reasons set forth below, Defendant's motion as to the institutional records and medical records is **DENIED**.<sup>2</sup> The separate issue of the requested unsealing of the July 1993 "Psychological/Psychiatric Report" will not be ordered for at least the reason that the Prothonotary cannot locate that report.

Defendant requests this Court to order the Department of Corrections to release Defendant's institutional file, medical records,<sup>3</sup> and the Court to release a sealed "Psychological/Psychiatric Report," apparently received by this Court in July 1993. The motion itself does not set forth the basis for the request other than to generally state that Defendant's counsel and the "Federal Defender Capital Habeas Unit" for the Eastern District of Pennsylvania (which is apparently assisting Defendant's counsel), "[i]n an effort to leave no stone unturned, ... [have] interviewed witnesses (across the country), plus reviewed dozens of court documents, exhibits, and physical evidence."<sup>4</sup> Defense counsel "represents that this request for records is made 'in good faith[.]'" and suggests that an *in camera* hearing would be appropriate should the Court "need[.] more specific information[.]"<sup>5</sup>

The State responds that it has no objection to the release of Defendant's institutional records and medical records created while he was incarcerated, assuming, however, that the purpose of such release of records is for an application for commutation of sentence to be filed by Defendant with the Parole Board and Board of Pardons.<sup>6</sup> The State does object to the release of Defendant's institutional records and medical records in the possession of the Department of Corrections if such release is for the purpose of discovery in connection with Defendant's possible pursuit of further litigation. The State argues that "[i]n the procedural posture of defendant's case - the completion of both state post-conviction and federal

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<sup>2</sup> The current motion was dated April 26, 2006, but it was not filed with the Prothonotary until the late afternoon of April 28, 2006. A courtesy copy of the motion was not received in chambers until May 1, 2006. The State was ordered to file a response to Defendant's motion by noon on May 2, 2006, and did so. This Court has decided this motion as expeditiously as possible given the proximity of the scheduled execution date.

<sup>3</sup> Included in Defendant's motion are a medical release form and a Delaware HIPPA Release Form, both signed by Defendant.

<sup>4</sup> Def.'s Mot. ¶ 2.

<sup>5</sup> *Id.* ¶ 6.

<sup>6</sup> Letter to the Court from Loren C. Meyers, Esq., ¶ 2, 3 (May 2, 2006).

habeas litigation - any further state or federal litigation is presumptively abusive.”<sup>7</sup> The State advises further that it believes any *in camera* ex parte meeting with Defendant’s counsel would be “immaterial” under the circumstances of this case.<sup>8</sup>

The Court met *in camera* today with Mr. Foley to learn more about Defendant’s request for these documents. At that conference, Mr. Foley advised the Court:

- Defendant will not be seeking a commutation of his sentence before the Board of Parole and/or the Board of Pardons.
- Further motions in this case may be filed in either State or Federal courts.
- Defendant seeks the medical records from the Department of Corrections to explore:
  1. Possible evidence of Defendant’s physical injuries sustained in an automobile prior to the murder with which he was charged, which might support a claim that Defendant was unable to lift the axe used to assault the victim as part of the murder; and
  2. Evidence of organic brain damage at the time of the murder.
- Defendant identifies nothing specific in Defendant’s Department of Corrections institutional records, but wishes release of the records in the event significant information of an unspecified nature might be found in such files.<sup>9</sup>

The relevant statute for the release of the type of Department of Corrections information requested by defense counsel is 11 *Del. C.* § 4322 (a), which provides, in pertinent part:

[t]he supervision history and all other records obtained in the discharge of official duty by any member or employee of the Department [of Correction] shall be privileged and shall not be disclosed directly or indirectly to anyone other than the courts as defined in § 4302 of this title, the Board of Parole, the Board of Pardons, the Attorney General and the Deputies Attorney General ... except that the court or Board of Pardons may, in its discretion, permit the inspection of the report or parts thereof

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<sup>7</sup> *Id.* ¶ 4.

<sup>8</sup> *Id.* ¶ 5.

<sup>9</sup> The transcript of today’s conference shall be unsealed immediately.

by the offender or the offender's attorney ... whenever the best interest of the State or welfare of a particular defendant or person makes such action desirable or helpful. No person committed to the Department [of Correction] shall have access to any of said records.

Thus, the grant or denial of this motion is within the discretion of the Court, and the Court must determine if "the best interest of the State or welfare of a particular defendant or person makes such an action desirable or helpful."<sup>10</sup>

Given Defendant's counsel's explicit representation today *in camera* that Defendant will not be seeking a commutation of his sentence before the Board of Parole and/or the Board of Pardons, this Court finds that the "welfare of a particular defendant or person" does not make the release of Defendant's institutional files and medical records at the Department of Corrections "desirable or helpful" pursuant to 11 *Del. C.* § 4322(a).<sup>11</sup> The Court notes further that it received a letter dated April 19, 2006, from Dr. Andrew W. Donahue, a forensic psychiatrist, and Dr. Kathryn M. Sheneman, a psychologist, both with Delaware Health and Social Services, advising that "Mr. Jackson indicated that he would not participate in the interview [pursuant to 11 *Del. C.* § 4350(c)] because it has not been requested by his attorney."<sup>12</sup>

The reasons disclosed *in camera* for the release of this information show that Defendant seeks this information to obtain discovery for further possible new postconviction litigation. In light of that reason, this Court will deny the motion.<sup>13</sup> The Delaware Supreme Court has recognized that a trial court possesses "the inherent authority under Rule 61 in the exercise of its discretion to grant particularized discovery for good cause shown."<sup>14</sup> Moreover, it has been recognized that "petitioners are not entitled to go on a fishing expedition through the government's files in hopes of finding some

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<sup>10</sup> 11 *Del. C.* § 4322(a).

<sup>11</sup> *Id.*

<sup>12</sup> Letter to Warden Thomas Carroll from Dr. Andrew W. Donahue & Dr. Kathryn M. Shenemen (April 19, 2006).

<sup>13</sup> Neither party has argued whether this Court has jurisdiction to act on this request now that it has been established that there will be no application for commutation of sentence before the Board of Parole or the Board of Pardons. The exigencies of time did not allow further briefing or development of this issue.

<sup>14</sup> *Dawson v. State*, 673 A.2d 1186, 1197-98 (Del. 1996) (holding that trial court did not abuse its discretion by denying discovery for lack of "good cause" in connection with defendant's postconviction relief motion).

damaging evidence.”<sup>15</sup> In *Dawson*, where defendant’s postconviction discovery request was denied, the defendant did not satisfy the “good cause” standard because “the information sought was not relevant to any plausible defense theory[,]” as there had been “substantial physical and circumstantial evidence ... produced discrediting [defendant’s] account of the circumstances of the crime.”<sup>16</sup> This Court will apply a “good cause” standard to Defendant’s request even though, unlike *Dawson*, here there is no pending motion for postconviction relief implicating a possible need for discovery.

The sparse information provided to the Court *in camera* today compels a finding that no “good cause” has been shown for the release of Defendant’s institutional file and medical records for purposes of postconviction discovery. Thus, Defendant’s motion as to the release of the institutional file and medical records for such purposes is **DENIED**.

As to the release of the 1993 “Psychological/Psychiatric Report,”<sup>17</sup> although an extensive search of the Prothonotary’s office was recently conducted when the Prothonotary learned that Defendant was probably going to request to inspect the report, the Prothonotary cannot presently locate this report. The Court’s record does not disclose who prepared the report or why it was sent to the Court. The docket for this case does not indicate whether such a report was requested by the Court in the first place. The Court notes that Dr. Stephen Mechanick, a psychiatrist, testified for Defendant in the first penalty hearing in March and April 1993 shortly before the apparent July 1993 receipt by the Court of the report; this report may be a report from Dr. Mechanick and may have formed a basis for Dr. Mechanick’s testimony at the 1993 hearing and may be available to Defendant from other sources.

For the foregoing reasons, Defendant’s “Motion for Order to Release Department of Corrections Records” is **DENIED**. The Court cannot unseal and release the 1993 “Psychological/Psychiatric Report” (even assuming, without deciding, that it would do so) for the foregoing reasons.

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<sup>15</sup> *Deputy v. Taylor*, 19 F.3d 1485, 1493 (3d. Cir. 1994) (upholding district court’s denial of petitioner’s request for additional discovery where he could not show that any discovery would support his contentions, apparently in the absence of any then-pending motions for postconviction relief in state court).

<sup>16</sup> *Dawson*, at 1198.

<sup>17</sup> Docketed as “sealed” on July 20, 1993 (D.I. 85).

**IT IS SO ORDERED.**

Very truly yours,

cc: Prothonotary